

November 6, 2012

Corporate Communications Department
Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street
Central
Hong Kong

(via email response@hkex.com.hk)

Dear Sir/Madam

Re: Consultation paper on board diversity

The Women's Foundation strongly supports the changes proposed by Hong Kong Exchanges and Clearing Limited (HKEx) to the Corporate Governance Code and Corporate Governance Report concerning board diversity.

The benefits of greater diversity, including board diversity, are well documented. International research has consistently highlighted that greater diversity in the workforce, management and boardrooms leads not just to greater equity and fairness but also a myriad of business and economic benefits. These benefits are summarised in Appendix A.

Our attached submission outlines the reasons why The Women's Foundation supports the proposed changes. We also suggest some additional amendments which we believe will further support board diversity and assist in creating lasting and sustainable change in Hong Kong.

In particular, TWF considers:

- Given the large number of highly educated, talented and capable women in the workforce – many of whom are already serving on Government committees and NGO boards, Hong Kong is well-positioned to assume a leadership role in Asia when it comes to addressing board diversity.
- Changes to the Corporate Governance Code are just the first step and need to be supported by a range of initiatives from business and the community to ensure both the demand is there for board directors who would bring new and valuable perspectives, as well as the supply of board-ready candidates.
- The concept of 'diversity of perspectives' is too broad.
- The nomination committee should actively review diversity when considering size and composition of the board.

19A Chun Wo Commercial Centre
23-29 Wing Wo Street
Sheung Wan, Hong Kong
tel +852-2592-8265 fax +852-2592-8264

香港上環永和街23-29號俊和商業中心19樓A室
電話 +852-2592-8265 傳真 +852-2592-8264

info@thewomensfoundationhk.org
www.thewomensfoundationhk.org

Charity Number:91/6962



THE WOMEN'S
FOUNDATION

研究·合作·改變
婦女基金會

RESEARCH • COLLABORATE • CHANGE

- The Women's Foundation supports the broader view of diversity proposed in the consultation paper. We do not support restricting the definition of diversity and agree that issuers should consider diversity as it applies to their particular context and circumstances. However, the chronic under-representation of women on Hong Kong boards would suggest gender diversity warrants greater attention and should be a specific component of the proposed Code Provision. We believe requiring specific disclosure of the proportion of women directors, executive and non-executive, would introduce important transparency.
- A new Code Provision is preferable to a Recommended Best Practice.
- Diversity policies should go beyond just board level.
- Measurable objectives should be part of companies' diversity policies.
- Diversity should be a separate section of the Corporate Governance Report Mandatory Disclosure Requirements.
- While we believe board diversity in Hong Kong needs to be addressed as a matter of urgency, we think an implementation date of June 1, 2013 should allow adequate time to support successful implementation and the development of supporting initiatives.
- A review process is important to assess effectiveness.

We congratulate Hong Kong Exchanges and Clearing Limited on launching this consultation process, which we regard as a critical first step towards achieving greater board diversity in Hong Kong.

We look forward to continuing to work with you to build a more diverse and inclusive Hong Kong.

Yours sincerely,



The Women's Foundation

19A Chun Wo Commercial Centre
23-29 Wing Wo Street
Sheung Wan, Hong Kong
tel +852-2592-8265 fax +852-2592-8264

香港上環永和街23-29號俊和商業中心19樓A室
電話 +852-2592-8265 傳真 +852-2592-8264

info@thewomensfoundationhk.org
www.thewomensfoundationhk.org

Charity Number:91/6962

Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below on the proposed change discussed in the Consultation Paper downloadable from the HKEx website at: <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201209q.doc>.

Where there is insufficient space provided for your comments, please attach additional pages.

1. Do you agree that the Exchange should promote board diversity?

Yes (**subject to comments below**)

No

Please give reasons for your views.

We agree that the Exchange should promote board diversity as part of its role in ensuring that the highest standards of corporate governance are in place in Hong Kong. There are many well-documented benefits of board diversity (see Appendix A), which contribute to good corporate governance and enhanced company performance more broadly.

Many countries already have policies and requirements to support board and employee diversity (ranging from legislative requirements such as quotas to voluntary diversity policies). As an international financial centre, Hong Kong cannot afford to lag behind developments in this area which has implications for Hong Kong's competitiveness and its attractiveness as a listing venue.

Supporting reasons

a) Hong Kong is best placed to step forward as a leader in our region addressing board diversity

Hong Kong's sophisticated labour market is made up of an abundance of highly qualified and experienced professionals. Women comprise almost half of the labour forceⁱ, 33% of senior management positionsⁱⁱ and 53% of university studentsⁱⁱⁱ in Hong Kong. This provides Hong Kong with an exciting opportunity to lead Asia in promoting and addressing board diversity and in particular, the under-representation of women on boards, learning from and building on international best practice and experience.

Around the world, governments and exchanges have introduced regulation and/or legislation to encourage companies to improve the diversity of their boards and organisations. The Catalyst report '*Increasing Gender Diversity on Boards: Current Index of Formal Approaches*' published in April 2012 provides a timely summary of current legislation, regulation and voluntary methods and demonstrates the efforts of many countries to address diversity.

European countries are the most advanced in terms of the introduction of formal approaches to address board diversity. However, regulatory measures have also been introduced in Australia, United States, Singapore and a number of African countries.

While Asian countries have generally been slower to promote board diversity, some countries (including Malaysia and Singapore) are beginning to make progress and Hong Kong risks being left behind. According to the Korn/Ferry Institute Report *'The Diversity Scorecard: Measuring board composition in the Asia Pacific'* China has the second highest percentage of female independent directors (12.3%) among Australia, Hong Kong, India, Malaysia, New Zealand and Singapore. In the same report, only 25% of Hong Kong respondents answered 'yes' to the question, 'Looking ahead, do you expect your company to accelerate implementation of gender diversity measures?' compared to 35% of China respondents.

b) Changes to the Corporate Governance Code are just the first step and need to be supported by initiatives from business and the community

For companies and the community to reap the benefits of board diversity, corporate governance requirements such as 'comply or explain' need to be backed-up by initiatives and programs to ensure the right measures are in place, on both the 'demand' and 'supply' side. These have increasingly developed around the world as formal measures have been introduced and Hong Kong has an excellent opportunity to learn from the most effective initiatives.

For example, on the demand side, The Women's Foundation is collaborating with the 30% Club in the UK to launch a Hong Kong 30% Club in early 2013. The 30% Club will be seeking interest from chairmen and organisations voluntarily committed to bringing more women onto Hong Kong boards.

Targets and pledges to increase the number of women on boards have been adopted in a number of countries, as opposed to mandatory quotas, to encourage businesses to recognise the benefits of diversity and to voluntarily commit to achieving a more balanced board. The Women's Foundation supports voluntary methods to stimulate initiatives by business and community to develop their own solutions to addressing diversity and build critical stakeholder engagement.

The Women's Foundation does not consider that it would be appropriate to adopt board diversity quotas for women in Hong Kong at this point in time. However, we believe quotas are part of the conversation about addressing board diversity and may become appropriate or necessary as a 'jump-start' if regulatory tools, best practice and voluntary targets fail to deliver results over time.

On the supply side, we think it is critically important that companies focus on building a pipeline of qualified individuals from diverse backgrounds with sufficient experience to be considered for board appointments (see response to Question 3 below). Training and preparatory courses can assist in ensuring prospective directors are 'board ready'. The Women's Foundation is collaborating with the Hong Kong Securities Institute (HKSI) and the Hong Kong Institute of Directors to build a 'pipeline' of qualified and experienced directors through joint training and professional development programs.

Comments

c) The term ‘diversity of perspectives’ is too broad

Proposed drafting revision: The Women’s Foundation suggests removing the words ‘of perspectives’, and referring to ‘diversity’ only in A.3, as per below to ensure policies adequately address diversity.

A.3

“The board should have a balance of skills, experience and diversity ~~of perspectives~~ appropriate to the requirements of the issuer’s business.”

We are concerned that the term ‘diversity of perspectives’ proposed for Principle A.3 could act to water down the concept of diversity. (Note: The proposed principle A.5 also states the nomination should give adequate consideration to this concept.)

The Women’s Foundation does not consider that true diversity can be achieved, nor the benefits realised, solely from factors such as educational background, professional experience or other skills and attributes as suggested in paragraph 70 of the consultation paper. This understanding of diversity could be adopted narrowly to result in all members of a particular board being of the same gender, age or cultural background with the argument being made that they have different perspectives based on their professional experience and skills.

d) The nomination committee should actively review diversity when considering size and composition of the board

Proposed drafting revision: The Women’s Foundation suggests including the word ‘diversity’ in the specific areas to be reviewed relating to size and composition of an issuer’s board in A.5.2 (a). We also recommend wording be included at the end of Principle A.5.2 (b) requiring that steps be taken to ensure a diverse range of candidates are considered for board appointments.

A.5.2

“The nomination committee should be established with specific written terms of reference which deal clearly with its authority and duties. It should perform the following duties:-

- (a) review the structure, size and composition (including the skills, knowledge, **and** experience **and diversity** of the board at least annually and make recommendations on any proposed changes to the board to complement the issuer’s corporate strategy;*
- (b) identify individuals suitably qualified to become board members and select or make recommendations to the board on the selection of individuals nominated for directorships, **ensuring that steps are taken to ensure a diverse range of candidates are considered.**”*

The Women's Foundation considers that diversity should be a key consideration for nomination committees when reviewing the structure, size and composition of the board.

We think this is sufficiently important that it be included in nomination committees' terms of reference in A.5.2, along with requirements that steps be taken to ensure a diverse range of candidates are considered for every board appointment.

2. If your answer to Q.1 is “yes”, do you agree that our Corporate Governance Code and Corporate Governance Report is the appropriate place for the new measures on board diversity?

Yes

No

Please give reasons for your views.

Supporting reasons

We believe the Corporate Governance Code (the Code) and Corporate Governance Report are the appropriate place for the new measures on board diversity. This is consistent with similar approaches in the UK and Australia.

The structure of the Code incorporating Principles, Code Provisions (‘comply or explain’) and Recommended Best Practices provides an appropriate framework to incorporate board diversity into key aspects of corporate governance. The proposed addition to the Mandatory Disclosure Requirements of the Corporate Governance Report also supports important accountability and transparency of issuers’ compliance with the proposed Code Provision.

We believe this is likely to be the most effective approach compared with other options such as including provisions in the voluntary Environmental, Social and Governance Appendix which would be too lenient, or the stricter approach of including requirements in the Listing Rules.

3. Do you agree with our proposal to introduce CP A.5.6 (*the nomination committee or the board should have a policy concerning diversity of board members, and should disclose the policy or a summary of the policy in the corporate governance report*)? Please give reasons for your views.

Yes (**subject to comments below**)

No

Please give reasons for your views.

Supporting reasons

a) A Code Provision strikes the right balance

The introduction of Code Provision CP A.5.6 requiring companies to ‘comply or explain’ strikes the right regulatory balance to ensure boards give adequate consideration to board diversity, including the development of a diversity policy. We believe companies are more likely to adhere to a Code Provision than a Recommended Best Practice and transparently report on compliance.

This approach is also consistent with regulatory measures adopted internationally as outlined in Catalyst’s report—almost all countries listed [in the regulation chapter] have adopted a ‘comply or explain’ approach [by means of a code provision or equivalent] .

Comments

b) Diversity policies should go beyond just board level and should include measurable objectives for achieving diversity.

Proposed drafting revision: The Women’s Foundation suggests removing the words ‘of board members’ in A.5.6 as per below to encourage policies which address diversity at all levels of the company. We also recommend additional language for diversity policies to include measurable objectives for achieving diversity.

A.5.6

*“The nomination committee or the board should have a policy concerning diversity ~~of board members~~, and should disclose the policy or a summary of the policy in the corporate governance report. **The policy should include requirements for the nomination committee (or the board) to establish measurable objectives for achieving diversity and for the nomination committee (or the board) to assess annually both the objectives and progress in achieving them.**”*

The Women’s Foundation considers that the Code Provision should be amended to cover diversity at all levels of the company and include a requirement for measurable objectives.

First, improving gender diversity at all levels of an organisation assists to build a ‘pipeline’ of qualified and experienced women which is critical to improving gender diversity on boards. A

board policy on diversity, without a broader company-wide policy, only addresses part of the problem.

For example, in Australia, the Corporate Governance Code includes a requirement for a company-wide diversity policy. The Code also lists suggestions for what a diversity policy might include such as the articulation of the benefits of diversity, promotion of a corporate culture to embrace diversity, identification of programs and transparency of board processes, review and appointments. While the UK approach is board-specific, the UK has other measures to address the ‘pipeline’ of board-ready women such as the introduction of a code for the head-hunting industry and Government initiatives to tackle barriers for women in the workplace.

Secondly, we consider that measurable objectives are key to ensuring the successful implementation of diversity policies and allowing companies to assess their progress in achieving diversity. If a company has a policy, it should also have a procedure to identify how the achievement of gender diversity is implemented and measured.

This does not necessarily mean, as suggested in the UK’s Financial Reporting Council ‘*Feedback Statement: Gender Diversity on Boards*’, that companies should set a series of targets for all aspects of diversity. Instead, companies should be encouraged to assess their current diversity levels, identify where gaps exist and establish measurable objectives which reflect their particular business circumstances. We do not believe there is a ‘one size, fits all’ approach.

There are a number of different types of measurable objectives which a company might set for itself including:

- procedural/structural objectives – for example, establishing a diversity committee or appointing a diversity manager.
- targets – for example, targets to increase the number of women in particular areas of the business where women are currently under-represented, or targets for executive and board positions.
- initiatives, programs and support mechanisms – for example, mentoring and coaching programs, women’s networks, training, leadership programs, employee surveys on diversity.^{iv}

To assist companies in developing a diversity policy and supporting measurable objectives, the Exchange may wish to consider issuing a Recommended Best Practice to provide guidance to companies and share international practice. The Women’s Foundation would welcome an opportunity to work with the Exchange to develop this.

c) Gender diversity warrants greater attention and should be a specific component of the proposed Code Provision

Proposed drafting revision: The Women's Foundation suggests adding the words 'including gender diversity' after 'diversity' in A.5.6 as per below to ensure that diversity policies specifically address gender diversity.

A.5.6

*"The nomination committee (or the board) should have a policy concerning diversity, **including gender diversity**, and should disclose the policy or a summary of the policy in the corporate governance report."*

The Women's Foundation supports the broad view of diversity proposed in the consultation paper. We believe issuers should consider diversity as it applies to their particular context and circumstances.

However, the issue of gender diversity warrants greater attention given this is the most glaringly obvious disparity. Over 40% of Hong Kong's boards have no female representation on their boards at all, 37% have only one female director and there has been no improvement in the statistics over the last five years.

While still promoting a broad definition of diversity, the UK and Australian regulations specifically highlight gender diversity. In its response following the consultation exercise it conducted in the UK, the UK's Financial Report Council (FRC) said that despite feedback from respondents that explicit references to gender should be deleted, they considered it inappropriate to remove these references citing a number of reasons why gender diversity was particularly important, as summarised below.

- A lack of gender diversity around the board table may weaken the board encouraging 'group think'.
- Low percentages of women on boards may demonstrate a failure to make full use of the talent pool.
- Boards with no, or very limited, female membership may be weak in terms of connectivity with, or understanding of, customers and workforce and offer little encouragement to aspiration among female employees.^v

4. Do you agree (i) with our proposal to introduce a note under CP A.5.6 to clarify what we mean by diversity; and (ii) with the content of the note? Please give reasons for your views.

(i)

Yes

No

(ii)

Yes

No

Please give reasons for your views.

Supporting reasons

We consider the inclusion of a note under CP A.5.6 to explain what is meant by “diversity” an important addition to build understanding among Hong Kong companies.

We agree with the content of the note which explains that diversity incorporates a number of factors including, but not limited to, gender, age, cultural and educational background, and professional experience.

Comments

While we support the content of the note as drafted, we consider the lack of women on Hong Kong boards warrants specific and urgent attention in other sections of the Corporate Governance Code and Corporate Governance Report.

The Women’s Foundation has identified other areas where we suggest gender diversity should be specifically addressed, as listed below:

- Adding the words ‘including gender diversity’ in the Code Provision to ensure diversity policies specifically address gender diversity (see Question 3).
- As part of the mandatory disclosure provisions, requiring companies to disclose the proportion of women employees in the entire organisation, women in senior management and women on the board (including executive and non-executive directors) (see Question 5).

5. Do you agree with our proposal to introduce a new mandatory disclosure provision in the Code stating that if the issuer has a policy concerning diversity, it should disclose details of the board’s policy or a summary of the policy on board diversity, including any measurable objectives that it has set for implementing the policy, and progress on achieving the objectives? Please give reasons for your views.

Yes (subject to comments below)

No

Please give reasons for your views.

Supporting reasons

The Women’s Foundation agrees with the proposed introduction of a mandatory disclosure provision which will provide important transparency and accountability to shareholders and the community.

As outlined in our response to Question 1, the changes to the Code should encourage organisations to drive sustainable cultural change to improve diversity, rather than adopting a ‘tick the box’ compliance approach. Mandatory disclosure is a key part of this.

Comments

a) Diversity should be a separate section of the Corporate Governance Report Mandatory Disclosure Requirements

Proposed drafting revision: The Women’s Foundation suggests adding a new section to the Corporate Governance Report Mandatory Disclosure Requirements to specifically address diversity as per below and revising Section L on the nomination committee to refer to this new section.

L. (d) (ii)

“If the nomination committee (or the board) has adopted a policy concerning diversity, the issuer should report on those items as set out in section XX on Diversity.” ~~this section should also include the board’s policy or summary of the policy on board diversity, including any measurable objectives that it has set for implementing the policy, and progress on achieving those objectives.~~”

XX. DIVERSITY

Issuers should provide a copy of their diversity policy, or summary of that policy, including:

- (a) Measurable objectives for implementing the policy*
- (b) Progress towards achieving these objectives*
- (c) Number and proportion of women employees in the entire organisation, women in executive positions and women on the board.*

The Women's Foundation proposes that a separate section of the Mandatory Disclosure Requirements is developed to specifically address organisational diversity. The Exchange's consultation paper proposes a requirement to report the board's diversity policy, any measurable objectives and progress against these objectives under 'nomination committee' in Section L on 'Board Committees'.

Companies' diversity policies and measurable objectives will, and should, extend beyond the activities of the board. The Women's Foundation considers that diversity is necessary at all levels of an organisation to assist in building a 'pipeline' of appropriately qualified and experienced executives and directors in Hong Kong.

b) Disclosure of proportion of women adds important transparency

Proposed drafting revision: The Women's Foundation suggests adding a requirement that companies disclose the proportion of women at all levels of the company as set out in 5 (a) above.

The Women's Foundation considers that the issue of gender diversity warrants specific attention. As part of the Mandatory Disclosure Requirements, companies should be encouraged to disclose the proportion of women employees in the entire organisation, women in senior management and women on the board (including executive and non-executive directors). Publication of this information will assist to build transparency and accountability of gender diversity.

The Women's Foundation also notes that in the Exchange's Consultation Conclusions on Environmental, Social and Governance Reporting published in April 2012, the Exchange noted that a number of respondents suggested including gender information on workplace related disclosures and information on executive and board composition, such as the percentage of women at board and senior management/executive committee level.

At the time, the Exchange noted that it was 'considering the issue as a separate exercise, so these matters are not included in this Guide.' We assume the separate exercise is the current board diversity consultation; however, these disclosures on executive and board composition are not referred to in the Exchange's Consultation Paper on Board Diversity. The Women's Foundation supports these disclosures and urges the Exchange to consider their inclusion as part of the current exercise.

6. Which of the following would you prefer as the implementation date of the amendments set out in this paper?

- 1 January 2013
- 1 April 2013
- 1 June 2013
- 1 September 2013
- Other, please specify and give reasons.

Supporting reasons

- a) While we believe board diversity in Hong Kong needs to be addressed as a matter of urgency, an implementation date of June 1, 2013 should allow adequate time to support successful implementation and the development of supporting initiatives**

While Hong Kong is lagging behind other major economies in addressing board diversity and The Women's Foundation encourages companies to develop and adopt a diversity policy as soon as possible, we believe providing an adequate timeframe will assist to support the successful implementation of the new requirements.

The concept of diversity is likely to be new to most listed companies in Hong Kong and it is important business is afforded time to understand the rationale for increasing diversity, become familiar with the new requirements and have sufficient time to develop an effective diversity policy/strategy.

Requirements for board diversity need to be accompanied by broader initiatives by business and the community. We expect companies will look to the Exchange, the Hong Kong Institute of Directors and stakeholder groups like The Women's Foundation for resources and information on addressing the new requirements, which may take organisations some time to develop.

- b) A review process is important to assess effectiveness**

The Women's Foundation recommends that once the Code Provision is implemented, the Exchange commits to a review process to assess the effectiveness of the new requirements, including the Code Provision and the mandatory disclosure requirements, in increasing diversity at the board level, and within organisations more generally. This could be accompanied by an annual review or summary of companies' disclosure and composite metrics on, for instance, the number of women directors.

- End -

APPENDIX A: BENEFITS OF BOARD DIVERSITY

Over the last decade, arguments for diversity have expanded from notions of equality and equal opportunity, to highlight the linkages between increased gender diversity and stronger corporate performance as summarised below.

- Research from around the world has demonstrated that increased board diversity is associated with **more effective decision-making** as a result of board directors bringing different perspectives, solutions, ideas and concerns to the table. More diverse groups also encourage creativity and innovation.
- There is a growing body of research that demonstrates that more diverse companies **outperform less diverse companies**. Stocks with greater gender diversity on their boards tend to perform best when markets are falling, deliver higher average returns on equity (ROEs) through the cycle and exhibit less volatility in earnings.^{vi}
- Diversity allows companies to **attract and retain the best talent**. Hong Kong boards have the opportunity to tap into the wealth of qualified female board candidates available in Hong Kong.
- Women’s perspectives at executive and board levels allow companies to better target their goods and services for **female consumers**. Research already indicates that, globally, women drive three-quarters of all spending in consumer markets.^{vii}
- The appointment of directors with different backgrounds, skills, experience, and perspectives is **good corporate governance**. As an international finance centre, Hong Kong companies should at the very least adopt international standards of best practice in corporate governance.
- Greater diversity demonstrates that companies are committed to equal opportunity, modern governance practices and innovation leading to **enhanced corporate image and reputation**.
- Diversity is a **driver of competitiveness** for business, and also for Hong Kong overall. We all stand to benefit from an expanded talent pool.
- The need for diversity goes beyond the boardroom—it’s also about **equity, fairness and sustainability**. Women make up 53% of society and almost half of our labour force, yet are under-represented in key decision-making which affects our economy and community.

ⁱ Census and Statistics Department, *Women and Men in Hong Kong: Key Statistics*, 2012
<http://www.statistics.gov.hk/pub/B11303032012AN12B0100.pdf>

ⁱⁱ Grant Thornton, *Women in senior management: Still not enough*, www.internationalbusinessreport.com/files/ibr2012%20-%20women%20in%20senior%20management%20master.pdf

ⁱⁱⁱ Census and Statistics Department, *Women and Men in Hong Kong: Key Statistics*, 2012
<http://www.statistics.gov.hk/pub/B11303032012AN12B0100.pdf>

^{iv} Australian Institute of Company Directors, ‘*New Corporate Governance Recommendations on Diversity: Tips for getting started*’, http://www.asxgroup.com.au/media/PDFs/new_cg_recommendations_diversity_aicd_tips_started.pdf

^v Financial Reporting Council UK, *Feedback statement: Gender diversity on boards*, October 2011
<http://www.frc.org.uk/getattachment/ade9464e-2195-4ce7-b99d-dabaec94e870/Feedback-Statement-Gender-Diversity-on-Boards.aspx>

^{vi} Credit Suisse ‘*Gender diversity and corporate performance*’, August 2012, https://infocus.credit-suisse.com/data/_product_documents/_shop/360145/csi_gender_diversity_and_corporate_performance.pdf

^{vii} Euromonitor, *Who buys what: Identifying international spending patterns*, February 2007